56A-8

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

In the matter of the petition of HOMEOWNERS OF ENCINO to amend § 91.119(d) of Title 14, Code of Federal Regulations	Regulatory Docket No. 27371

DENIAL OF PETITION FOR RECONSIDERATION

By letter dated June 29, 1995, Mr. Gerald A. Silver, President, Homeowners of Encino, P.O. Box 260205, Encino, California 91426-0205, petitioned the Federal Aviation Administration (FAA) on behalf of the Homeowners of Encino for reconsideration of Denial of Petition for Rulemaking (Docket No. 27371) to amend § 91.119(d) of Title 14, Code of Federal Regulations (14 CFR). In that Denial of Petition for Rulemaking (hereafter referred to as the Denial), the FAA found that it was not in the public interest to limit helicopter operations below the minimum altitudes prescribed in § 91.119(b) and (c) to helicopters operated by any municipal, county, State, or Federal authority for emergency services, rescue operations, or police or fire protection.

The petitioner requests a change to the following regulation:

> Section 91.119(d) prescribes, in pertinent part, an exception for helicopters to operate at lower altitudes than those prescribed by § 91.119(b) and (c) if the operation is conducted without hazard to persons or property on the surface.

In its original petition, the petitioner sought to revise the first sentence of § 91.119(d), so that it states the following:

> (d) Helicopters. Helicopters operated by any municipal, county, State, or Federal authority for emergency services, rescue operations, or police or fire protection may be operated at less than the minimum prescribed in paragraph (b) or (c) of this section if the operation is conducted without hazard to persons or property on the surface.

The remaining language in § 91.119(d) would not change.

The petitioner's request for reconsideration consists of nine pages of detailed information and argument supporting its request. In reconsidering this matter, the FAA has considered all points raised by the petitioner. The following provides a summary of the petitioner's main points:

AFS-95-444-P

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL # of pages ► 15

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NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

hundreds of letters supporting the proposed rule change. The petitioner believes that the support of these citizens, municipalities, and community organizations represents a compelling public need for relief from low-flying helicopters.

(b) The Denial states that "Lack of adequate landing space may be hazardous to persons and property on the ground. A helicopter, conversely, can land with little or no forward speed." The petitioner believes that this statement erroneously implies that a helicopter can land safely without an established minimum altitude while general aviation aircraft cannot.

(c) A report conducted by Helicopter Association International (HAI), published in the 1995 Helicopter Annual, reports that the number of U.S. civil helicopter fatal accidents caused by wire strikes rose from 0 in 1990 to 14 in 1993. In addition, fatalities rose from zero to nine during the same time period, and the total number of serious injuries rose from two per year to five per year.

(d) Special rules for flights over the Grand Canyon were imposed after several accidents occurred there. Similarly, tougher safety rules were developed for Hawaii after two helicopters were involved in fatal accidents on July 14, 1994 (Orange County Register, June 2, 1995).

(e) The tour helicopter that crashed on January 14, 1995, in the Cahuenga Pass, Los Angeles, placed thousands of motorists and residents at risk, and caused several fatalities. That helicopter could have landed on the heavily trafficked freeways or the nearby homes. The petitioner believes that a minimum altitude for helicopters may have prevented the crash.

The petitioner asserts that it is unreasonable that there are no minimum altitudes for helicopters operating over populated areas. The petitioner also argues that the FAA fails to provide local communities with the tools to control low flying helicopters, both for noise and safety reasons, while refusing to deal with the issue at the national level.

The petitioner asserts that the agency failed to consider the above facts in its Denial and that the Denial contains numerous facts that are erroneous. As discussed below, in issuing the Denial, the FAA considered the petitioner's arguments and all public comments in response to the petition. The petitioner, however, has failed to identify the facts that he states are erroneous. Furthermore, the petitioner has failed to supply documentation to support such an allegation.

1. Failure to do a reasoned determination.

The petitioner claims that the FAA failed to do a reasoned determination of the facts and issues in the original petition as mandated by Executive Order 12866, which requires a careful assessment of costs and benefits. The petitioner believes that the Denial is "conclusionary" and lacks presentation of the paper trail, documentation, and specific facts that would allow a reasonable person to assess the costs and benefits of the proposed rule change.

Additionally, the petitioner states that the FAA did not exercise due diligence in addressing the petition, in that the FAA did not conduct hearings on the subject of the petition, nor did it seek important comments from the National Transportation Safety Board. The petitioner further states that the agency "merely relied upon the handful of self-serving objections received during the comment period from helicopter operators."

The petitioner states that the FAA is bound to consider the factual differences between the situations in Santa Monica and those in Encino. In the case of Santa Monica, a request was made for a 500-foot minimum altitude, while in Encino's case, a 1,000-foot minimum was requested. The petitioner indicates that there clearly are differences in the impacts on noise, safety, and environmental issues.

2. The petitioner is denied due process.

As a result of the perceived failure of the FAA to include a reasoned analysis of the situation, the petitioner asserts that it has been denied due process. The petitioner states that by lack of a paper trail and reasoned analysis, the FAA has denied the petitioner the ability to understand and challenge the conclusions stated in the Denial.

Also, the Denial did not include explicit facts, evidence, or results of acceptable research or safety studies. Therefore, the petitioner contends that because no factual statements or verifiable conclusions were included, it is unable to challenge the validity of the Denial.

3. Findings of material facts that were erroneous.

The petitioner presents that the following critical facts were either ignored or not considered/discussed by the FAA in its Denial:

(a) The Denial falsely states that the petitioner did not provide a safety justification or show a "compelling need on behalf of the American public." The petitioner provided the FAA with a petition that includes over 2,000 signatures of individuals greatly disturbed by low-flying helicopters. The docket for this petition, which is supported by Congressmen Beilenson, Berman, and Waxman; Los Angeles Mayor Richard Riordan; and dozens of elected officials, municipalities, and homeowner associations, contains

4. Minimum altitudes for helicopters do not create safety problems.

The petitioner maintains that while many of the comments submitted by the helicopter operators suggest that a minimum altitude requirement would create a safety problem for helicopter operators, this is simply not true; rather the reverse is the safer practice. The petitioner quotes HAI publication, "Fly Neighborly Guide" (revised February 1993), which recommends, for voluntary noise abatement, maintaining an altitude of at least 1,000 feet where possible and 2,000 above the surface over noise-sensitive areas.

The petitioner provides the example of the implementation of a 1,500-foot AGL minimum altitude policy that was adopted a decade ago by the Los Angeles International Airport (LAX). The petitioner adds that the policy created no significant safety problems. The petitioner also notes that resolutions regarding minimum altitudes have been adopted by Los Angeles, Manhattan Beach, El Segundo, Hawthorne, Culver City, and Los Angeles County. The petitioner claims that each of these resolutions goes further than the petitioner's request, and asks the FAA to increase the minimum altitude for helicopters from the current 1,500 feet AGL to a more acceptable level of 2,000 feet AGL.

The petitioner provides that an ad hoc committee, consisting of various representatives from local governments and chaired by Mr. James Holtsclaw, the FAA Facility Manager, LAX, found no safety problems with a minimum altitude policy.[1]

The petitioner further states that in response to the proposed rule change, the FAA should have given due consideration to the Los Angeles City Council resolution approved by the Industry and Economic Development Committee in 1986. The petitioner quotes the following from the summary:

> Helicopter noise has been an increasing problem to residents of many areas in the Southern California basin in general.... These residents have a right to the protection of environmental quality, the freedom from low-flying rotorcraft, and the enjoyment of home and recreational activities without continuous intrusion from the air.

The petitioner presents the LAX policy as evidence that the helicopter noise-problem can be adequately addressed by establishing minimum altitude with no compromise in safety.

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[1] The petitioner quotes from the committee report that "supported recommendations of a 2,000-foot AGL minimum altitude for helicopters since data show that this is the minimum necessary to mitigate the interference of helicopter noise with normal speech communications" [cf. Council File No. 84-1565-81].

5. Legal conclusions that were without necessary legal governing precedent, or departures from FAA rules and precedent.

The petitioner states that the FAA is charged with both safety and environmental concerns, including noise.[2] The petitioner contends the exclusion of that fact in the Denial is a material error, because it ignores the FAA's stated policy and practice in Notice No. 94-5. The petitioner also maintains that, in the past, the FAA has consistently addressed noise issues and spent millions of dollars on 14 CFR part 150 studies and mitigation. The petitioner adds that the FAA also sponsors and conducts numerous studies on the effects of helicopter noise on communities and has adopted minimum altitudes in the past for low-flying helicopters.

The petitioner contends that the Denial also is seriously flawed in the statement that "it is not in the public interest to amend this safety regulation for the reasons [noise control] suggested by the petitioner." The petitioner believes that it is not only proper, but also necessary that the FAA take immediate action on this matter, including noise as one of its justifications for the rule change.

The petitioner reports that, in March 1995, a Federal Appeals Court upheld a Federal rule requiring tour helicopters in Hawaii to fly at least 1,500 feet AGL (West Hawaii Today, March 30, 1995). The petitioner notes that the FAA modified the Federal Aviation Regulations (FAR) on an emergency basis in response to extensive criticism from the NTSB. According to the Ninth U.S. Circuit Court of Appeals, the revised rules and emergency treatment, which dispensed with advance public notice and comment, were justified by the record before the FAA. The petitioner quotes Judge Mary Schroeder in the 3-0 ruling, that "[T]he FAA adequately explained the basis for taking emergency action without waiting for public participation...voluntary measures and existing regulations [were] insufficient to ensure safe air tour operations in Hawaii...the agency also reasonably explained that *a requirement of 1,500 feet minimum altitude would give pilots time to react in an emergency, instruct passengers, and prepare for a forced landing.*" [Emphasis added by the petitioner].

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[2] The petitioner quotes from the Advanced Notice of Proposed Rulemaking regarding overflights [Docket No. 27643; Notice No. 94-5]:

> "The FAA's authority is not limited to regulation for aviation safety, efficiency, and development. Subsection 307(c) of the FAAct provides that FAA air traffic rules and flight regulations may be adopted *for the protection of persons and property on the ground. The FAA considers this protection to extend to environmental values on the surface as well as to the safety of persons and property.*" (Emphasis added by the petitioner.)

6. Additional relevant facts that were not presented in the initial petition.

Lastly, the petitioner provides additional facts and circumstances that it considers significantly different from those contained in the original petition. The petitioner states that this information is being submitted now because it involves accidents, material facts, and precedents that were not available at the time of the submission of the original petition. The petitioner claims that there was no way to know these facts before the submission of the original petition.

(a) The petitioner claims that it is aware that the helicopter noise problem has become substantially worse, and affects many more residents than previously assumed. In addition, the petitioner contends that the safety problem also has increased. As support, the petitioner refers to the January 14, 1995, helicopter crash in the Cahuenga Pass, Los Angeles, and the increasing number of fatal helicopter accidents nationwide. The petitioner maintains that the aforementioned accidents are frequently caused by low-flying helicopters striking wires or conducting sightseeing operations at low altitudes.

(b) Public hearings addressing the helicopter safety problem have been held by both resident groups and the Los Angeles City Council. Since the original petition for a rule change was filed, the petitioner reports that Los Angeles has conducted a hearing on the issues surrounding low-flying helicopters and has asked the City Attorney to assess the situation. According to the petitioner, these public meetings and hearings make it clear that additional measures must be taken by the FAA to mitigate the helicopter noise problem.

(c) The petitioner states that the substantial increase in low-flying media helicopters and the resultant increase in noise were not presented in the original petition. The petitioner contends that the radio and television media, using helicopters, have been conducting low-flying activities over freeway chases and crime scenes. The petitioner adds that this increase in media coverage attests to the growing severity of the problem.

(d) In January 1995, the NTSB asked the Federal Government to ground temporarily the type of helicopter that was involved in four crashes in Germany, Switzerland, and the United States, killing seven people in 1994. The petitioner reports that NTSB investigators suspected malfunctioning rotor blades as the cause of the four accidents. The petitioner adds that in the case of at least three of the accidents, the blades hit the main body of the helicopter or sliced off the tail (Orange County Register, June 6, 1995).

(e) Prompted by more than 100 fatal accidents that claimed the lives of sightseers during airplane or helicopter tours,

the NTSB sought tighter regulation of the rapidly growing air tour industry. The petitioner indicates that special rules for flights over the Grand Canyon, imposed after several accidents occurred in that area, have enhanced safety. Similarly, the petitioner states that tougher safety rules were developed for Hawaii. Previously, the petitioner claimed that the FAA had issued a series of Special Federal Aviation Regulations (SFARs) that enhanced the safety of air tour operations. The petitioner further reports that the FAA has now augmented programs, such as inspection and surveillance activities, aimed at improving the safety of air tour operations in the Grand Canyon and Hawaii. The petitioner maintains that the FAA will conduct an extensive program focused on the safety of air tour operations. The petitioner states that this is a material change of circumstances that supports a reconsideration of the petitioner's request.

(f) The NTSB recently conducted a special investigation on air tour safety and then released its report on the air tour industry on June 1, 1995. According to the petitioner, this forced the FAA to increase its commitment to safety of the nation's air tour industry, of which many tours are conducted by helicopter operators. The FAA's renewed interest was in response to the NTSB's report containing safety recommendations affecting the industry.

(g) According to the petitioner, low-flying operations, such as the tour helicopter mentioned above, are conducted from Van Nuys Airport every 10 or 20 minutes during the evening hours of certain seasons. The petitioner adds that such flights pose safety risks. In addition, the petitioner mentions that media helicopters also operate from Van Nuys Airport and Burbank Airport.

(h) On June 5, 1995, the FAA released a Technical Panel Report on Robinson Helicopters. The petitioner states that the report describes recommendations to increase the level of safety for Robinson R22 and R44 helicopters such as design changes, prohibitions on specific flying procedures, and additional research and flight testing. The petitioner claims that these actions are a result of an extensive 9-month review by a special FAA Technical Panel established by the agency's Rotorcraft Directorate. The petitioner explains that the Technical Panel researched solutions to accidents in which the helicopter's main rotor blades made contact with the airframe, causing a loss of control and the breakup of the aircraft. The petitioner maintains that the recommendations are a series of steps begun by the FAA to resolve safety issues involving Robinson helicopters. According to the petitioner, the FAA has issued Airworthiness Information Letters to pilots, Airworthiness Directives that determine flight limitations, and an SFAR. In addition, the petitioner indicates that the Flight Standardization Board (FSB) defined training, checking, currency, and pilot experience requirements. The petitioner also states that

the FSB initiated the implementation of simulator and flight tests, and human factors research during investigation of accidents involving rotor/airframe contact. The petitioner states that these recommendations are particularly important because many helicopter tours, training, and media operations are conducted in Robinson helicopters.

The petitioner provided 12 letters of support provided by various political representatives and a table, "U.S. Civil Helicopter Safety Trends," published by HAI with the Petition for Reconsideration.

A summary of the Petition for Reconsideration was published in the Federal Register on August 23, 1995 (60 FR 43726). One hundred and thirteen comments were received; 112 in favor of the Petition for Reconsideration, and 1 against the Petition for Reconsideration.

Eastern Region Helicopter Council, Inc., submitted the comment opposing the Petition for Reconsideration. This commenter agrees with the Denial. The commenter contends that requiring helicopters to fly at fixed-wing altitudes would effectively prohibit helicopter flight in New York City, and many other cities, when the cloud ceiling is below 1,000 feet, because of the heights of many of the buildings in these areas. The commenter also states that not being able to fly with basic visual flight rules (VFR) cloud cover would be an unacceptable restriction to air commerce. The commenter contends that the requirements of current § 91.119(d) have been in effect for many years without causing a safety problem for people on the ground, and that nothing has occurred to justify changing the requirements.

The 112 comments in favor of the Petition for Reconsideration were received from individuals and families, political representatives of the individuals petitioning for rulemaking, associations, and citizens' action groups.

Ninety comments were received from individuals or families containing a total of 114 signatures. One of these 90 comments was received via telephone, and includes a request that the altitude restrictions also apply to blimps. Three commenters support the petition without any further description of their positions or concerns.

Sixty-two of the 90 individual commenters cite safety as one of their concerns, with commenters citing such concerns as flights in the proximity of schools and populated areas, possibilities of mid-air collisions over incidents of media interest, and low flight precluding a safe landing in the event of an emergency. Thirty-seven commenters describe the fatal wire-strike accident that occurred in January 1995 in the Cahuenga Pass, Los Angeles, or other aircraft accidents, as well as the accident rate associated with scenic-tour operators and the helicopter tour industry in Hawaii. Many of these commenters state that safety concerns and their quality of life outweigh the economic considerations of the helicopter operators.

Fifty-nine of the 90 individual commenters state that the noise and/or vibration from the low-flying helicopters affect their ability to sleep, work, or enjoy use of their yards. Of these 58 commenters, 9 mention only noise, and do not include any safety concern in their

comment. Many of the comments about aircraft noise state that the helicopter traffic begins as early as 6:00 a.m. and lasts until 11:00 p.m. Many state that the noise from the helicopters made conversation or use of the telephone impossible. One commenter describes damage to his home, which he blames on the vibrations from helicopters. Several commenters complain about the pollution associated with the operation of the helicopters, and one recommends the establishment of helicopter corridors over highways and golf courses.

Thirty-one of the 90 individual commenters express concern about helicopter operations near children or in the vicinity of parks and schools. Many of these commenters are concerned about the possibility of a mid-air collision and the potential for disaster. Others express concern about the disruption of school activities.

Twenty-four of the 90 individual commenters address operations by the media or helicopter tour operators. These commenters state that the media's use of helicopters for traffic observation and helicopter clustering in the vicinity of areas of media interest create an unsafe condition. Several commenters recommend that the media consolidate their needs and use one aircraft to provide film to all news programs. Other commenters express concern about the potential for mid-air collisions over areas of media interest, such as crime scenes or car chases. Because helicopter tour operators conduct dinner flights and scenery tours after dark, commenters discussing these operators complain about the associated late-night noise problems.

Sixteen of the 90 individual comments were letters submitted to the docket from individuals opposed to the Localizer Type Directional Aid (LDA) construction at Santa Monica Airport. These letters are basically identical and state that the LDA will bring additional air traffic directly over the commenters' neighborhood. The commenters request that the FAA decommission the LDA project. They also express concern about the safety and endangerment of their community and neighborhood schools. The commenters state that children would be directly under the flight path, and even an occasional accident is not worth the added convenience that the LDA would afford the Santa Monica Airport. These commenters also state that the noise and pollution would diminish the quality of life in their neighborhood.

Eleven of the 90 individual commenters express their concern for pets and farm animals. These commenters state that the aircraft noise causes their animals to panic and injure themselves in their enclosures, or to run away and not return. Animal breeders state that the aircraft noise causes their animals to stop breeding, laying eggs, etc.

Eight comments were received from representatives of firms and homeowners associations. Seven of these comments describe concerns about safety, including concerns about helicopter flight near schools and residential areas. Five commenters complain about the noise and vibration associated with low-flying helicopters, one of which describes the potential affects on citizens' health caused by the noise and vibration of aircraft. Four commenters describe the recent accident in Cahuenga Pass and the scenic-tour accident rate in

Hawaii, and express concern that the a similar accident could occur in their area. Four commenters express concern about flights near schools or children. Three commenters express concern about the clustering of aircraft near areas of media interest, and the possibility of a mid-air collision. One of these recommends the establishment of media pools that would use one aircraft to cover news activities. One of the commenters addresses noise issues and concerns, and does not describe a safety concern.

Twelve comments were received from political representatives of areas affected. Ten representatives include their concern for the safety of residents, school children, or aircraft passengers. Nine commenters included complaints about the noise associated with low-flying aircraft, with one commenter including concern about the potential effects on human behavior due to noise. One commenter describes his constituents' rights to quiet enjoyment of their property versus operators' desire to fly low over urban areas. Five commenters are concerned about the increasing use of helicopters over accident and crime scenes. Three commenters describe recent accidents or the Hawaiian helicopter tour industry, and express concern that the situation in the areas represented is similar. One representative simply supports the petition.

Two comments were received from citizens' interest groups, each containing numerous signatures and statements; one of the comments was from the Civil Liberties Monitoring Project and the other from the Pacific Justice Center.

The Civil Liberties Monitoring Project forwarded 29 sworn declarations from residents of Humboldt County, California, describing incidents that involved low-flying helicopters. These helicopter operations were apparently being conducted by the Campaign Against Marijuana Planting and the Marijuana Eradication Team. These statements describe damage to homes, vehicles, and surrounding vegetation caused by the rotor wash of the helicopters. Many of the statements also describe loss of or injury to pets and livestock, or affected breeding habits. Several of the statements include detailed descriptions of pilots and passengers, indicating that the aircraft were flying very low.

The Pacific Justice Center submitted 19 citizen complaints in the form of letters and sworn declarations. These documents describe several areas of concern, such as noise levels, physical disturbance (from dust, wind, etc.), fear, and safety concerns. The comments also state that the overflights are an invasion of the privacy of the affected citizens.

The FAA's analysis/summary is as follows:

After reviewing the supporting information presented by the petitioner, the FAA has determined that a denial of the Petition for Reconsideration is appropriate and justified. The petitioner presented several arguments in its Petition for Reconsideration, and the FAA would like to address each.

In response to the petitioner's claim that the FAA failed to make a reasoned determination of the facts and issues in the original

petition, including an assessment of costs and benefits, as mandated by Executive Order 12866, the FAA points out that Executive Order 12866 applies to Federal agencies in the promulgation of regulations. Executive Order 12866 directs that, in promulgating regulations, agencies should assess all cost and benefits of available regulatory alternatives. The FAA has not initiated any rulemaking under the petition because the petitioner has not presented a sufficient safety justification for modifying this regulation. Therefore, the directives of Executive Order 12866 are not required.

The petitioner also contends that it has been denied due process. The FAA notes that the petitioner filed its petition for rulemaking by letters dated July 8, 1993, and January 10, 1994. The petition was filed in accordance with the provision set forth in 14 CFR § 11.25. The FAA published a summary of the petition in the Federal Register and received a total of 347 comments (59 FR 11010; March 9, 1994). After considering the comments, the FAA denied the petitioner's request for rulemaking on June 8, 1995, in that the petition did not provide a safety basis that would justify the initiation of rulemaking procedures. The FAA published a summary of this denial in the Federal Register on September 25, 1995 (60 FR 49353). The FAA followed the requirements set forth in 14 CFR part 11. Therefore, the petitioner was awarded the due process envisioned by the Administrative Procedures Act (APA) and the Federal Aviation Regulations (FAR).

The petitioner further argues that the FAA failed to exercise due diligence in its determination in that the agency did not hold public hearings on the petition, nor did it seek comment from the NTSR. Because the petitioner filed the petition in accordance with 14 CFR § 11.25, only public comment solicitation via publication of the petition in the Federal Register is required. Public hearings or solicitation of specific comments on petitions for rulemaking are not required or provided for by the 14 CFR § 11.25 process.

The petitioner also claims that the FAA is bound to consider the differences between the situations in Santa Monica and the conditions in Encino and address the differences in its Denial. While the FAA evaluates each petition for rulemaking on its own merits, portions of the agency's analysis is applicable to the facts set forth in both petitions. The major difference between Santa Monica's and Encino's petitions is that Santa Monica requested a 500-foot AGL minimum altitude for helicopters and Encino requested a 1,000-foot AGL minimum altitude. Although the petition notes safety considerations, it appears that the major consideration driving both petitions is noise abatement. The difference in requested minimum altitude does not impact the FAA's previous determination that there is no compelling safety reason to justify such rulemaking.

In addition, the petitioner contends that the comments submitted by the helicopter operators, suggesting that a minimum altitude requirement would create a safety problem, are not true. The petitioner references noise abatement procedures that have been implemented without any known safety problems. Restricting helicopter operations to a 1,000-foot AGL minimum altitude could adversely impact safety by forcing rotorcraft to fly at the same

petition, including an assessment of costs and benefits, as mandated by Executive Order 12866, the FAA points out that Executive Order 12866 applies to Federal agencies in the promulgation of regulations. Executive Order 12866 directs that, in promulgating regulations, agencies should assess all cost and benefits of available regulatory alternatives. The FAA has not initiated any rulemaking under the petition because the petitioner has not presented a sufficient safety justification for modifying this regulation. Therefore, the directives of Executive Order 12866 are not required.

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In addition, the petitioner contends that the comments submitted by the helicopter operators, suggesting that a minimum altitude requirement would create a safety problem, are not true. The petitioner references noise abatement procedures that have been implemented without any known safety problems. Restricting helicopter operations to a 1,000-foot AGL minimum altitude could adversely impact safety by forcing rotorcraft to fly at the same

altitude as fixed-wing aircraft. This problem is particularly critical in areas such as the Los Angeles basin, where there are numerous fixed-wing aircraft flying traffic patterns for adjacent airports at altitudes near 1,000 feet AGL. The petitioner has not shown adequate safety justification for a national mandatory minimum altitude for helicopter operations. Further, the FAA maintains that local noise issues do not warrant the promulgation of a nationwide standard affecting all helicopter operations throughout the entire national airspace.

The petitioner provides the example of the implementation of a 1,500-foot AGL minimum altitude policy that was adopted a decade ago by LAX. The 1,500-foot AGL altitude was designated along arrival and departure corridors for LAX and was based on safety considerations. As such, the altitude assisted in structuring a safe and orderly traffic sequence at the airport. Such traffic patterns are developed to provide separation between arriving/departing aircraft at LAX and aircraft operating at or near surrounding airports.

The petitioner asserts that the FAA is "charged with both safety and environmental concerns, including noise." The petitioner refers to the ANPRM issued by the FAA concerning overflights of public lands, Docket No. 27643, Notice No. 94-5. This ANPRM sought public comment on general policy and specific recommendations in fulfillment of statutory obligations for voluntary and regulatory actions to address the effects of aircraft overflights on national parks. Completing 20 years of consistent application, the 1976 Aviation Noise Abatement Policy continues to be the official Agency policy on efforts to mitigate the adverse effects of aviation noise. The policy iterates that airport proprietors, who are legally responsible for the effect of aircraft noise on the surrounding community, are also primarily responsible for planning and implementing actions designed to reduce the effect of noise on residents of the surrounding area. In addition, state and local governments and planning agencies have the responsibility to provide for appropriate land use planning and development, zoning, and housing regulations that will limit uses of land to purposes compatible with present and projected aircraft noise exposure in the area. FAA officials will continue to work with airport operators, air operators, and representatives of communities adversely affected by aircraft noise to encourage the development of appropriate noise control, including land use control.

The petitioner states that establishing a minimum altitude for helicopter operations for noise abatement will not compromise safety. Again, the FAA reaffirms the agency's position in the Denial that while a specific community may have some valid complaints about particular helicopter operations and resultant noise, noise issues within a limited geographic region do not warrant the promulgation of a nationwide standard affecting all helicopter operations.

The petitioner states that in the past, the FAA has consistently addressed noise issues and spent millions of dollars on 14 CFR part 150 studies. Part 150 is applicable to airport noise compatibility planning activities of public-use airport operators, and to land-use programs and studies made by public-use airport developers. It provides technical assistance to airport and heliport

operators, in coordination with local, state, and Federal authorities, to prepare and execute appropriate noise compatibility planning and implementation programs within the airport environment. This activity is not applicable outside the airport environment.

The petitioner also cites SFAR No. 71 as legal precedent for addressing the safety issue with respect to minimum altitude requirements for helicopters. There is a clear distinction between the air tour operations within the environment of Hawaii, which SFAR No. 71 was promulgated to address, and the general helicopter operations and conditions over Encino identified by the petitioner. SFAR No. 71 was promulgated on an emergency basis to address the escalation of air tour accidents in the State of Hawaii. Particularly in Hawaii, the vast majority of air tour operations are conducted over the same specific sights, which congests the helicopters in one small area. The regulation was intended to enhance the safety of air tour operations within the State. Both the NTSB and the FAA identified several risks that warrant placing air tour operators in a specific classification. The risks associated with low-flying air tour operations in Hawaii include: unpredictable winds that create less stable flying conditions, fewer options to escape unforeseen weather; unmarked or unknown obstructions; less time to select suitable emergency landing areas; increases in pilot workload because of quick stops, rapid turns, and watching for obstructions; inability to be detected by air traffic control radar; inability to conduct two-way radio communication; increased likelihood of ingesting foreign debris, including salt water spray, into the engine; less overall reaction time; and congestion of low flying traffic at scenic locations. Further, with respect to Hawaii, many air tours are conducted over scenic areas along rugged coasts, where, in the event of an engine failure, the pilot must ditch in the ocean. It is important to note that SFAR No. 71 was promulgated only after voluntary measures did not correct the safety problems.

The petitioner states that special rules for air tour operators in the Grand Canyon and Hawaii were imposed after several accidents occurred. The FAA enacted SFAR Nos. 50-2 and 71 for commercial operators and air carriers detailing rules of operations involving the transportation of passengers in air commerce in specific areas of the United States. These rules were promulgated to ensure a higher level of safety for the traveling public.

In cooperation with the National Park Service, the FAA established minimum operational guidelines, including routes of flight and operating specifications for the following areas: the Grand Canyon, Haleakala National Park, and Hawaii Volcano National Park. These operational procedures defined minimum altitudes appropriate for the operation of helicopters carrying passengers for compensation or hire over regions with limited open areas available for emergency landings. Due to terrain differences, promulgation of the minimum altitude regulation proposed by the petitioner would not improve the safety level in the Encino County area as the SFARs do for Hawaii and the Grand Canyon. The helicopter route structure (including altitudes) in the Los Angeles basin provides a high level of safety for the nonflying public because operating routes generally follow superhighways and avoid congested areas as much as possible. In addition, the regulation provided in the SFARS establishes additional

operational requirements for operators carrying passengers for compensation or hire. While a certain number of helicopter operators in the Los Angeles area carry passengers for compensation or hire, the current route system has maintained an adequate level of safety for persons and property on the ground and in the air.

One of the petitioner's arguments in support of its petition is that the helicopter noise and safety problem has become substantially more significant. No evidence was presented by the petitioner to confirm this statement. The petitioner does refer to helicopter trends between 1990 and 1993, and one helicopter accident that took place on January 14, 1995, in Cahuenga Pass, Los Angeles. However, no consideration as to the cause or frequency of such accidents was discussed.

The petitioner mentions public hearings and meetings held by resident groups and the Los Angeles City Council that address the helicopter safety issue. No conclusive outcome of the hearings was included in the Petition for Reconsideration other than the statement that the meetings "made it abundantly clear that additional measures must be taken by the FAA to mitigate the helicopter noise problem." The FAA has found that meetings of the Helicopter Users Group indicate that the helicopter operators and the residents of Encino are working to solve the issue at a local level. Open to the public, the meetings are held monthly to discuss the ramifications of the current helicopter operations on the general public and the best method to alleviate the situation. The result of these meetings may not be fully satisfactory to all, but should lead to a solution acceptable to the majority.

In reference to the petitioner's claim that a "substantial increase in low-flying media helicopters and the increasing noise problem... attests to the growing severity of the [helicopter] problem," the FAA reports that it has been informed that the Helicopter Users Group meetings frequently concentrate on this issue. These meetings are professionally managed by the participants and often a consensus is achieved that meets the needs of both the industry and the general public. For example, several media helicopters now use long-range, high resolution cameras and telephoto lenses, which allow the helicopter pilots to fly at higher altitudes while the media team obtains adequate coverage.

The petitioner also mentions the NTSB's request that the FAA ground Robinson R22 and R44 helicopters as a result of four fatal crashes in Germany, Switzerland, and the United States in 1994. The FAA reviewed the accident data to see if any of the accidents encountered by these helicopters could have been prevented or averted by the imposition of a minimum operating altitude. To address the Robinson issues, the FAA made changes to operating limitations on speed and flight during certain meteorological conditions. A national restructuring of operational altitudes through regulation, however, would not have been a feasible solution in addressing the Robinson issues.

In consideration of the foregoing, I find that the rulemaking, as proposed, would not be in the public interest, and the institution of rulemaking procedures for the purpose requested by the Homeowners of Encino

is not justified. Therefore, in accordance with the rulemaking procedures of 14 CFR part 11, the petition of the Homeowners of Encino to amend 14 CFR § 91.119(d) is denied.

David Hinson

Administrator

Issued in Washington, DC, on OCT 31 1996

SGA -9

HOMEOWNERS OF ENCINO
GERALD A. SILVER, PRESIDENT
P.O. BOX 260205
ENCINO, CA 91426-0205

U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION

In the matter of a reconsideration of a denial of a petition of	
HOMEOWNERS OF ENCINO	REGULATORY DOCKET 27371
to amend Sec. 91.119 of the Federal Aviation Regulations	
Submitted to David R. Hinson FAA Administrator	
Federal Aviation Administration 800 Independence Ave. S.W. Washington, DC 20591	June 29, 1995

I.

This petition for a reconsideration of a denial of a rule making is filed pursuant to Section 11.55 of Subpart B of 14 CFR, on behalf Homeowners of Encino, a tax exempt homeowner association in Encino, California. Homeowners of Encino represents a constituency of approximately 1100 homeowners situated in the San Fernando Valley, south of Van Nuys Airport.

II.

On June 8, 1995, Thomas C. Accardi, Director, Flight Standards Service submitted a letter to the petitioner denying a petition for a proposed rule change, filed July 8, 1993, and January 10, 1994. The amendment, if granted, would limit helicopter operations below the minimum altitude prescribed in Section 91.119 (b) and (c) of Part 91 of 14 CFR, and would specifically exclude helicopters operated by any municipal, county, State, or Federal authority for emergency services, rescue operations, or police or fire protection.

The petitioner, requested the FAA to amend Section 91.119 of Part 91 of 14 CFR pertaining to minimum safe altitudes which states:

> Section 91.119(d) prescribes, in pertinent part, an exception for helicopters to operate at lower altitudes than those prescribed by Section 91.119(b) and (c) if the operation is conducted without hazard to persons or property on the surface."

The petitioner seeks to delete the section above, and instead, add the section below:

> "(d) Helicopters. Helicopters operated by any municipal, county, state or federal authority for emergency services, rescue operations, police or fire protection, may be operated at less than the minimum prescribed in paragraph (b) or (c) of this section if the operation is conducted without hazard to persons or property on the surface."

The remaining language in sub-section (d) of section 91.119 shall remain the same.

The denial of the petition by Mr. Accardi was based on statements and facts that were erroneous and legal conclusions that are contrary to FAA policy. The remainder of this request for reconsideration addresses the following matters related to Mr. Accardi's denial:

1. Findings of material facts that were erroneous.
2. Legal conclusions that were without necessary legal governing precedent, or departures from FAA rules and precedent.
3. Additional relevant facts that were not present in the initial petition.

Petitioner believes that the information below merits a full reconsideration of the denial.

III.

FAILURE TO DO A REASONED DETERMINATION

The FAA failed to do a reasoned determination of the facts and issues in this petition, as mandated by Executive Order 12866, which requires a careful assessment of costs and benefits. Mr. Accardi's denial is conclusionary and lacks the paper trail, documentation and specific facts that would allow a reasonable person to assess the costs and benefits of the proposed rule change. The denial contains numerous conclusions that are cursory and lack foundation.

1. Mr. Accardi's nine page denial contains seven pages that are merely repetition of submitted comments, incorporating no original assessment of costs or benefits of the proposed rule change. They merely restate remarks made by commenters.

2. Mr. Accardi's denial which took over eight months to prepare is little more than a "boiler plate" restatement of the denial issued in the matter of the petition of City of Santa Monica, dated May 4, 1995, Regulatory Docket No. 27736. The language in the denial uses the same wording, sentence structure and cursory comments as in the Santa Monica petition which was previously denied.

The FAA is bound to consider factual differences between the two cases. In the case of Santa Monica, a request was made for a 500 ft. minimum, while in the case at hand, a 1000 ft. minimum was requested. Clearly there are difference in impacts on noise, safety and environmental issues.

It is painfully obvious that the FAA avoided its mandated respon-

sibility to do a careful assessment and instead used a word processor to simply generate a pro forma denial. No considered reasoning, logic or determinations were evident in the denial.

3. The issue of helicopter noise and safety and minimum helicopter altitudes is of vital interest and concern to a large segment of the American population. Yet the FAA did not exercise due diligence in addressing the issue. The FAA did not conduct hearings on the subject of the petition, nor did it seek important comment from the National Transportation Safety Board. The agency merely relied upon the handful of self-serving objections received during the comment period from helicopter operators.

These facts are a justification for a reconsideration, ignoring the remaining errors described below.

IV.

PETITIONER IS DENIED DUE PROCESS

As a result of the failure to include a reasoned analysis, the petitioner is denied due process. The lack of a paper trail, and reasoned analysis denies the petitioner the ability to understand and challenge the conclusions reached by Mr. Accardi.

1. The denial did not include explicit facts, evidence or the results of accepted research or safety studies. Since no statements of fact were made or conclusions reached that can be verified, petitioner is therefore unable to challenge the validity of the denial. Thus the procedure lacks due process.

2. Upon close scrutiny of the denial issued by the FAA, there is a high probability that a Federal District Court would issue an writ of mandamus directing the FAA to prepare a more thoughtful response, including the required reasoned analysis.

To avoid and unnecessary legal challenge, it seems reasonable that the FAA to reconsider the matter and resolve it through the administrative process.

V.

FINDINGS OF MATERIAL FACTS THAT WERE ERRONEOUS

Mr. Accardi's denial contains numerous material facts that were erroneous and ignores the compelling safety need to establish helicopter minimum altitudes. He alleges that no compelling public need was established by petitioner. This is not true. The statement made by Mr. Accardi that "The FAA has determined that increasing the minimum operating altitude requirements for helicopters without providing a safety justification or showing a compelling need on behalf of the American public...," is flawed and in error.

1. The hundreds of letters from government officials, private citizens and representatives of homeowner associations from across the country attest to the compelling public necessity for establishing helicopter minimum altitudes. The petitioner made available to the FAA a petition that includes over 2000 signatures of individuals great-

ly disturbed by low flying helicopters. In addition, Docket 27371 contains hundreds of letters from individuals who support the proposed rule change. Taken together, all these citizens, municipalities, and community organizations represent a compelling public need to seek relief from low flying helicopters.

2. The petition filed by Homeowners of Encino is supported by Congressmen Beilenson, Berman, Waxman, Los Angeles Mayor Richard Riordan, and dozens of elected officials, municipalities and homeowner associations. Many of these commenters raised safety issues that should have been thoroughly addressed by the FAA.

3. Safety issues were improperly treated and essential facts ignored in the denial. Mr. Accardi states, "Lack of adequate landing space may be hazardous to persons and property on the ground. A helicopter, conversely, can land with little or no forward speed." This statement erroneously implies that helicopter can land safely with no minimum altitudes, as compared to small general aviation aircraft.

4. During the past several years the helicopter industry has experience a significant increase in low altitude helicopter accidents with injuries and fatalities. As reported by the HAI, 1995 Helicopter Annual, US civil helicopter wire strike fatal accidents rose from 0 in 1990, to 14 in 1993. Fatalities rose from 0 to 9 in the same time period, and the total number of serious injuries rose from 2 per year to 5 per year. These are critical facts that were not considered or discussed in Mr. Accardi's denial.

5. More than 100 fatal crashes that killed sightseers on airplane and helicopter tours prompted the National Transportation Safety Board to seek tighter regulation of the rapidly growing air tour industry. Special rules for flights over the Grand Canyon were imposed after accidents there. Similarly tougher safety rules were developed for Hawaii after two helicopters were involved in fatal accidents July 14, 1994 [Orange County Register, 6/2/95]. This leaves little doubt that minimum altitudes improve safety for helicopter operations. These facts should have been discussed by Mr. Accardi, if he had used due diligence in analyzing the proposed rule change.

6. The safety issue surrounding low flying media and sight seeing helicopters has become a serious problem for residents in Los Angeles, as well as other parts of the country. The tour helicopter that crashed on January 14, 1995 in the Cahuenga Pass placed thousand of motorists and residents at risk, and involved several fatalities. That helicopter could easily have landed on the heavily trafficked freeway, or on the nearby homes, and minimum altitudes may have avoided the crash altogether. The helicopter was on a sight-seeing dinner flight conducted between a San Fernando valley airport and a high-rise office tower in downtown Los Angeles.

Loww flying operations such as these are often conducted from Van Nuys Airport every ten or twenty minutes during evening hours during some seasons of the year, and pose safety risks. Other low altitude operations are conducted by media helicopters operating from the Van Nuys and Burbank Airports. At least a half dozens of these flights leave the airport near 6 AM and cruise at low altitudes down the Ventura Freeway, and through the Cahuenga Pass.

It is unreasonable that there are no minimum altitudes for helicopters operating over populated areas. The FAA should reconsider the proposed rule change, establishing a 1000' AGL minimum altitude for non-emergency helicopter flights, based upon these facts. The FAA fails to provide local communities with the tools to control low flying helicopters, both for noise and safety reasons, while refusing to deal with the issue at the national level. The FAA's denial ignores the needs of hundreds of thousands of residents, Congressmen, and the city mayors.

VI.

MINIMUM ALTITUDES FOR HELICOPTERS DO NO CREATE SAFETY PROBLEMS

Much of the comments submitted by helicopter operators are based upon suggestions that minimum altitude requirements would create a safety problem for helicopter operators. This is simply not true, rather the reverse is the safer practice.

1. Mr. Accardi's denial overlooks the fact submitted by petitioner that the helicopter industry association, Helicopter Associates International (HAI), advocates minimum altitudes and does not raise question regarding their safety. The official HAI publication, "Fly Neighborly Guide", Revised February 1993 asks helicopter pilots to follow basic guidelines for noise abatement:

> "maintain an altitude of at least 1000 feet where possible," [p. 4.]

The publication also stresses recommended voluntary noise abatement procedures that go even further over noise-sensitive areas:

> "Pilots operating fixed and rotary-wing aircraft under VFR over noise-sensitive areas should make every effort to fly not less than 2,000 feet above the surface, weather permitting, even though flight at a lower level may be consistent with the provisions of FAR 91.79, Minimum Safe Altitudes." [p. 5.] (emphasis added)

Mr. Bruce Gillaspie, Chairman of the HAI Safety Committee, reinforced this in the Fall 1994 issue of Rotor Magazine, the official publication of HAI. In his statement, Mr. Gillaspie quotes the HAI Fly Neighborly Pocket Guide prepared by the HAI Fly Neighborly Committee:

> "Where possible, maintain a minimum altitude of 1,000 feet above ground level and a lateral distance of 1,000 feet from noise-sensitive areas or facilities."

It should be clear from the official HAI position statements that a 1000' ft. minimum does not pose a safety problem.

2. Minimum helicopter altitudes have been employed without problems in the past. Almost a decade ago, a 1500' above ground level minimum altitude policy was adopted for LAX and it has not created any significant safety problems. Resolutions regarding minimum altitudes have been adopted by the City of Los Angeles, CA.; City of Manhattan Beach, CA.; City of El Segundo, CA; City of Hawthorne, CA; City of

Culver City, CA and the County of Los Angeles. Each of these resolutions go further and ask the FAA to "increase the minimum altitude for helicopters from the current 1,500 ft. to a more acceptable level of 2,000 above ground level."

An ad-hoc committee, made up of various representatives from local governments, and chaired by James Holtsclaw, the FAA Facility Manager at LAX found no safety problems with a minimum altitude policy. They supported "recommendations of a 2,000 foot above ground level minimum altitude for helicopters since data shows that this is the minimum necessary to mitigate the interference of helicopter noise with normal speech communications" [cf. Council File No. 84-1565-81]. No safety issues were raised now, or at that time by the panel.

3. In evaluating the petitioners's proposed rule change, the FAA should have given due consideration to the Los Angeles City Council resolution, approved by the Industry and Economic Development Committee in 1986. The summary states, "Helicopter noise has been an increasing problem to residents of many areas in the Southern California basin in general ... These residents have a right to the protection of environmental quality, the freedom from low-flying rotorcraft, and the enjoyment of home and recreational activities without continuous intrusion from the air."

The LAX policy is evidence that the helicopter noise problem can be adequately addressed by establishing minimum altitudes with no compromise in safety.

VII.

LEGAL CONCLUSIONS THAT WERE WITHOUT NECESSARY LEGAL GOVERNING PRECEDENT, OR DEPARTURES FROM FAA RULES AND PRECEDENT

The FAA is charged with both safety and environmental concerns, including noise. The exclusion of this fact is a material error in Mr. Accardi's denial, because it ignores the FAA's own, stated policy and practice. The FAA has consistently addressed noise issues. It has spent millions of dollars on Part 150 studies and mitigations. The FAA sponsors and conducts numerous studies on the effects of helicopter noise on communities. And it has in fact adopted minimum altitudes in the past for low flying helicopters.

1. Mr. Accardi's denial is seriously flawed in the statement that "it is not in the public interest to amend this safety regulation for the reasons [noise control] suggested by the petitioner. Petitioner believes that it is not only proper, but necessary that the FAA take immediate action on this matter, including noise as one of its justifications for the rule change.

The FAA clearly has the authority to address noise related issues involving helicopters. The following paragraphs quoted from the ANPRM regarding helicopter overflights [Docket no. 27643; Notice No. 94-5] are clear and to the point:

> The FAA has broad authority and responsibility to regulate the operation of aircraft and the use of the navigable airspace, and to establish safety standards for and regulate the certification of airmen, aircraft, and air carriers. (Federal Aviation Act of

1958, as amended (FAAct), Section 307(a) and (c); title VI.) The FAAct provides guidance to the Administrator in carrying out this responsibility.

Section 102 of the FAAct states that the Administrator will consider the public interest to include among other things, regulation for safety and efficiency of both civil and military operations, promotion of the development of civil aviation, fulfillment of the requirements of national defense, and operation of a common system of air traffic control for civil and military aircraft. Section 104 provides to each citizen of the United States a public right of transit through the navigable airspace of the United States. Section 305 directs and authorizes the Administrator to encourage and foster the development of civil aeronautics and air commerce. Section 306 requires the Administrator, in exercising his authority, to give full consideration to the requirements of national defense, commercial and general aviation, and to the public right of freedom of transit through the navigable airspace.

The FAA's authority is not limited to regulation for aviation safety, efficiency, and development. Subsection 307(c) of the FAAct provides that FAA air traffic rules and flight regulations may be adopted "for the protection of persons and property on the ground." The FAA considers this protection to extend to environmental values on the surface as well as to the safety of persons and property. Section 611 of the FAAct, "in order to afford present and future relief to the public health and welfare from aircraft noise," directs the Administrator to adopt regulations "as the FAA may find necessary for the control and abatement of aircraft noise," including application of such regulations to any of the various certificates issue under Title VI.

2. In March of 1995, a federal rule required tour helicopters in Hawaii to fly at least 1,500 feet above the ground, prompted by a series of crashes, was upheld by a federal appeals court [West Hawaii Today, 3/30/95]. The Federal Aviation Administration regulations, enacted on an emergency basis considered modifications in response to the extensive criticism, some of it from the National Transportation Safety Board.

The 9th U.S. Circuit Court of Appeals said the rules and the emergency treatment, which dispensed with advance public notice and comment, were justified by the record before the FAA. When the regulations were passed in September 1994, there had been seven helicopter accidents and four deaths in the previous nine months, and another 13 accidents and 20 deaths in the preceding two years, the court said. Another non-fatal crash took place Oct. 24, two days before the rules took effect.

"The FAA adequately explained the basis for taking emergency action without waiting for public participation," said Judge Mary Schroeder in the 3-0 ruling. She cited the FAA's statement that "voluntary measures and existing regulations are insufficient to ensure safe air tour operations in Hawaii" and that the problem was urgent. The agency also reasonably explained that a requirement of 1,500 feet altitude would give pilots time to react in an emergency,

instruct passengers and prepare for a forced landing, Schroeder said.

VIII.

ADDITIONAL RELEVANT FACTS THAT WERE NOT PRESENTED IN THE INITIAL PETITION AND THE REASONS WHY THEY WERE NOT STATED

The petitioner herewith is providing additional relevant facts and circumstances that have come to light that are significantly different from those contained in the initial petition. These are being submitted now because they involve accidents, material facts and precedents that were not available at the time of the submission of the initial proposed rule change. There was no way for petitioner to know these facts, and therefore provide a justification for reconsideration, according to Section 11.55 of Subpart B of 14 CFR.

1. Petitioner is now aware that the helicopter noise problem has grown substantially worse, and affects many more residents than previously assumed, and the safety problem has increased. The January 14, 1995 helicopter crash in the Cahuenga Pass, in Los Angeles, and the increasing number of fatal helicopter accidents nationwide is of major concern. These accidents are frequently caused by low flying helicopters that strike wires or that are conducting sightseeing operations at low altitudes.

2. Public hearings have been held by both resident groups and the Los Angeles City Council seeking to address the helicopter safety problem that petitioner seeks to resolve via the proposed rule change. Since the petition for a rule change was filed, the City of Los Angeles has conducted a major hearing on the issues surrounding low flying helicopters, and has ask the City Attorney to assess the situation. These public meetings and hearings make it abundantly clear that additional measures must be taken by the FAA to mitigate the helicopter noise problem.

3. A fact, not presented in the initial petition is the substantial increase in low flying media helicopters and the increasing noise problem they create. There has been extensive media coverage including radio and television helicopter conducting low flying activities during freeway chases or to report on crime scenes. This increased media coverage attests to the growing severity of the problem.

4. In January 1995, the National Transportation Safety Board asked the federal government to ground the helicopters until experts figure out what caused four crashes that killed seven people in Germany, Switzerland and the United States last year. In each of the four crashes, investigators suspected malfunctioning rotor blades, according to the NTSB. In at least three cases, the blades hit the main bodies of the helicopters or sliced off their tails [Orange County Register, 6/6/95].

5. More than 100 fatal crashes that killed sightseers on airplane and helicopter tours prompted the National Transportation Safety Board to seek tighter regulation of the rapidly growing air tour industry. Special rules for flights over the Grand Canyon were imposed after accidents there, and safety has been improved. Similarly tougher safety rules were developed for Hawaii.

6. The National Transportation Safety Board recently conducted a special investigation on air tour safety and then released its report on the air tour industry on June 1, 1995. This forced the FAA to increase its commitment to safety of the nation's air tour industry, of which many tours are conducted by helicopter operators. The FAA's renewed interest was in response to the NTSB's report containing safety recommendations affecting the industry.

Previously, the FAA had issued a series of special federal aviation regulations (SFARs) that established rules to enhance the safety of air tour operations. It has now augmented its inspection and surveillance activities. The FAA's programs were aimed at improving the safety of air tour operations in Hawaii and the Grand Canyon. The FAA will conduct an extensive program focused on the safety of air tour operations. This is a material change of circumstance that supports a reconsideration of petitioner's rule change.

7. On June 5, 1995 the FAA released a Technical Panel Report on Robinson Helicopters. The report describes recommendations designed to increase the level of safety for Robinson R22 and R44 helicopters. The recommendations include design changes; prohibitions on specific flying procedures; and additional research and flight testing.

The actions are the result of an extensive nine-month review by a special FAA Technical Panel established by the agency's Rotorcraft Directorate. The Technical Panel researched solutions to accidents in which the helicopter's main rotor blades made contact with the airframe, causing a loss of control and eventually the break-up of the aircraft. The recommendations are a series of steps begun by the FAA to resolve safety issues involving Robinson helicopters. The FAA has issued Airworthiness Information Letters to pilots, Airworthiness Directives (Ads) that set flight limitations, a Special Federal Aviation Regulation (SFAR), and convened a Flight Standardization Board (FSB) that defined training, checking, currency and pilot experience requirements; and initiated simulator and flight test and human factors research into rotor/airframe contact accidents.

These recommendations are particularly important since many helicopter tours, training and media operations are conducted from these aircraft. This provides additional reason to reconsider Mr. Accardi's denial of petitioner's rule change

IX.

Executed at Encino, California on June 29, 1995 by Gerald A. Silver, President, Homeowners of Encino

GERALD A. SILVER